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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

NO. 856

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, as Trustees of the UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND OF 1950, Petitioners

v.

MIKE MYHALYK, Respondent

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

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v.

MIKE MYHALYK, Respondent

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

MIKE MYHALYK, respondent herein, respectfully prays that the PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, filed by JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, As Trustees of the United Mine Workers of America Welfare and Retirement Fund of 1950, at the above number and term of this Honorable Court, be denied.

QUESTIONS PRESENTED

1. Should the PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA be dismissed because petitioners have raised, for the first time on

appeal, the singular question of assertion of right set up and claimed under the Labor-Management Relations Act, 1947, not raised in the Courts below?

2. Is the PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA, filed by petitioners in this Honorable Court, premature?

STATEMENT OF CASE

Mike Myhalyk, on December 12, 1958, caused to be issued a Writ of Foreign Attachment under the Pennsylvania Rules of Civil Procedure. The Writ was duly served upon Pittsburgh Consolidation Coal Company as garnishee, said coal company stipulating that it would retain from remittances to defendant Fund $15,000.00 to be held to satisfy any judgment rendered in said action. A complaint in assumpsit was duly issued and served upon said garnishee. Defendants, petitioners herein, appearing specially and de bene esse, filed preliminary objections in the nature of a petition raising the question of jurisdiction. The parties stipulated relevant facts to aid the lower Court in discerning the true nature of the UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUND which petitioners failed to provide this Honorable Court with. The preliminary objections were dismissed. The Supreme Court of Pennsylvania sustained the action of the lower Court in *Myhalyk v. John L. Lewis, et al.*, 398 Pa. 390, 158 A. 2d 305. Petitioners now seek to have this Honorable Court review the record below.

The United Mine Workers of America as a result of industry-wide collective bargaining entered into the National Bituminous Coal Wage Agreement of 1950

(hereinafter called the Agreement) with coal operators, wherein was created the United Mine Workers of America Welfare and Retirement Fund of 1950 (hereinafter called the Fund). Said Fund was to administer certain fringe benefits in the nature of pensions, hospital and medical benefits, unemployment and death benefits; all pursuant to rules to be promulgated by the "Board of Trustees." Respondent, plaintiff below, at the time of suit, was and still is a member of said union, was and still is of advanced age (69 years of age), poor and impoverished and virtually unable to do any remunerative work. Respondent, plaintiff below, had been continuously employed in the mining industry for thirty-five years and upon reaching the age of sixty-five years, did thereafter apply for pension benefits from said Fund and the application was refused and pension denied. Respondent, plaintiff below, complied with all rules and regulations of said Fund and provisions promulgated thereunder by the petitioners, defendants below. Respondent then brought the action in the Courts below to compel payment of pension benefiits.

REASONS FOR DENYING THE WRIT

1. The Petition for Writ of Certiorari to the Supreme Court of Pennsylvania Should Be Dismissed Because Petitioners Have Raised, for the First Time on Appeal, the Singular Question of Assertion of Right Set Up and Claimed under the Labor-Management Relations Act, 1947, Not Raised in the Courts Below.

The petitioners raised in the Supreme Court of Pennsylvania four questions: "1. Is the U.M.W.A. Welfare and Retirement Fund a Trust; 2. Where Congress has ordained that a welfare fund must be created and must operate as a trust (29 U.S.C. 186 (c)(5), is it within the competence of a Pennsylvania court nevertheless to rule that such fund must operate as unincorporated association?; 3. Are the Appellant Trustees of a foreign trust of movables amenable to a writ of foreign attachment in a Pennsylvania court, particularly since the separate pension trust res was not attached?; 4. Does the Pennsylvania court's assertion of jurisdiction violate the provisions of the 14th Amendment to the Constitution of the United States, in that it deprives Appellants of property without due process of law, and denies them equal protection of the laws?"

The singular question raised by petitioners in this Supreme Court of the United States was not raised in the courts below.

The reason is obvious. The proceedings below have not reached the stage where the merits of the case are on the record and the question raised by petitioners goes directly to the merits. Indeed, petitioners have not even filed an Answer to the Complaint filed in the lower court. Thus it is obvious why the question could not be

raised heretofore and cannot be raised now. It is unfortunate that petitioners did not confront the Supreme Court of Pennsylvania with the question now raised before this Supreme Court of the United States. The courts of the United States have repeatedly set forth that they will not review questions raised for the first time on appeal: *Artic Ice Machine Co. v. Armstrong County Trust Co.*, 192 F. 114, 116; *Thomas v. Kansas City Southern Ry. Co.*, 277 F. 708, 710.

This Supreme Court of the United States did deny a similar petition going to the merits in the case of *John L. Lewis, et al. v. Antonios G. Stampolis*, 359 U.S. 907.

By way of discussion, it would seem quite obvious that the Labor-Management Relations Act, Section 302, Title III c. 120, 61 Stat. 157, 29 U.S.C.A. 186, in no way creates any rights between union, employer and employee (union member). Rather, the Act is intended to prevent industrial strife in interstate commerce (see page 5 of petitioners' Petition). As stated by Senator Ball, 93 Cong. Rec. 4678 (1947) the sole purpose of the amendment was not to prohibit welfare funds, but to make sure that they are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them, and that they shall not degenerate into bribes. Petitioners argue that state court review of their wealthy organization promotes industrial strife and is inimical to the integrity of collective bargaining. Suffice it to say that the state courts have for decades opened their doors to air disputes and complaints of union members and beneficiaries of welfare funds. The fact that Congress, to protect welfare funds directed that such funds be held in trust, did not and was not intended to deny state courts juris-

diction over welfare funds where their states have a direct and substantial interest in such funds.

It would appear that Congress in providing at section 186 (e) of said Act that federal courts have jurisdiction in injunction proceedings to enforce compliance with said act intended that jurisdiction in other areas of enforcement of rights in such welfare funds be left to the state courts. It would appear that Congress in providing at section 186 (c) (2) that payments between employers and employees by reason of legal proceedings anticipated state court action in welfare fund disputes and approved the activity of state court regulation.

It is significant that petitioners, strenously arguing for uniformity in dealings with it, failed to inform this Supreme Court of the United States that the Fund is not supervised by any court in the Nation. It is elementary law that one court will not take jurisdiction of a trust which is supervised by the courts in a sister state. Until the Fund submits itself to a Court for supervision of its trustees, its trust investments, its trust expenditures, its trust activities and its trust accounting, it cannot complain.

2. The Petition for Writ of Certiorari to the Supreme Court of Pennsylvania, filed by Petitioners in This Honorable Court, Is Premature.

As set forth in the preceding paragraphs the record before this Supreme Court of the United States contains no testimony, record or other indication of petitioners' contention. The only proceedings in the Court below was on a writ of foreign attachment and the only opinion of the Court below was whether or not the Court of

Common Pleas of Allegheny County, Pennsylvania, had any trust res before it upon which it could assert its jurisdiction. The Supreme Court of Pennsylvania, having before it the question of jurisdiction, has not ruled on the question of orderly implementation of Labor-Management Relations Act of 1947. Under such a heavy and lofty question the plight of the miserable coal miner is all but lost. Respondent questions whether it would implement the National Labor Policy, supposed by petitioners to be enunciated in the Labor-Management Relations Act of 1947, to require a union welfare fund beneficiary residing in New York City to travel to the United States District Court for the Southern District of Florida to file an action against a non-resident union welfare fund.

CONCLUSION

Respondent respectfully submits that the PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA should be denied.

Respectfully submitted,

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May, 1960